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# Contracts--Acceptance of an Offer--When an Acceptance by Mail Takes Effect

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to reasonable law enforcement. The accused is forced to do many other things while under arrest (appear in court, finger-print, line-ups, etc.), hence it is submitted that no distinction should be drawn so as to bar chemical tests from use as evidence. The prohibition of any of these would render crime detection almost impossible.

Fourth. The privilege exists partly in order to stimulate the prosecution to a full and fair search for evidence procurable by its own exertions rather than a reliance upon oral testimony extracted from those accused of crime. It is evident that scientific tests of body substances do not violate this purpose, since such tests do not rely upon the testimony of the accused but rather upon objective physical, non-testimonial substances.

Fifth. For those who fear that such an approach (described herein as the historic view) leaves the door open for unreasonable police tactics, it is suggested that the following remedies are available for the protection of the accused:

(a) A civil suit for battery may be available against an officer who abuses a person while under arrest.<sup>47</sup>

(b) There is authority for the position that evidence obtained by chemical tests may be barred as evidence obtained by "Illegal Search and Seizure."<sup>48</sup>

(c) Excessive force in such tests may violate the "Due Process Clause" of the Fourteenth Amendment of the United States Constitution.<sup>49</sup>

Therefore, based upon history and policy, it is concluded that the correct interpretation of the privilege against self-incrimination does not protect an accused from being compelled to engage in scientific tests of his body substances for the purpose of securing evidence to be used in his criminal prosecution.

LUTHER HOUSE

## CONTRACTS—ACCEPTANCE OF AN OFFER—WHEN AN ACCEPTANCE BY MAIL TAKES EFFECT

The law of contracts with regard to the need for communication of the acceptance of an offer by mail was settled in England in 1818 by the case of *Adams v. Lindsell*.<sup>1</sup> Through a process of historical evolution, this case and its related cases established the doctrine that

<sup>47</sup> Foote, *Tort Remedies For Police Violations of Individual Rights*, 39 MINN. L. REV. 493 (April 1955).

<sup>48</sup> *State v. Weltha*, 228 Iowa 519, 292 N.W. 148 (1940).

<sup>49</sup> *Rochin v. California*, 342 U.S. 165, 25 A.L.R. 2d 1396 (1952).

<sup>1</sup> 1 Barnewall & Alderson 681, 106 Eng. Rep. 250 (K.B. 1818).

when an offer is made by mail, the acceptance is good when posted. A majority of American jurisdictions still follow this doctrine.<sup>2</sup> If a letter expressly or impliedly indicated by the offeror as the method of acceptance, the acceptance is effective when posted and it makes no difference that the letter is never received because of some mistake of the post office authorities, or because in some way it becomes lost.<sup>3</sup> Authority to respond by mail or to communicate an acceptance by mail may be inferred (1) where the post is used to make the offer and no other mode of acceptance is suggested, and (2) where the circumstances are such that it must have been contemplated that the mail would be used in returning an answer.<sup>4</sup>

There are excellent reasons behind the adoption of this position. For example, as the court in *Adams v. Lindsell* pointed out, if an acceptance were not good until received, long delay could result before the completion of a contract by post. If the offeror did not become bound until receipt of the acceptance, then the offeree should not be bound until receipt of the notification that the offeror had received his communication and assented to it. Commercial considerations dictate, however, that the offeree be entitled to act in reliance on the fact that his acceptance is good when put out of his possession. Thus commerce is accelerated to a great degree since the offeree may make preparations to carry out the terms of the contract, without waiting to see if his acceptance has been received by the offeror.

In order to constitute a valid contract, there must be a meeting of the minds; this meeting of minds must take place with the doing of some overt act intended to signify to the other party the acceptance of the proposition which the offeror has advanced. In regard to this principle of the law of contracts, it has been stated:

There is in fact no difference between the acceptance of a proposition by word of mouth and a letter stating an acceptance. In the one case it is articulate sounds carried by the air, in the other, written signs carried by the mail or by telegraph. The vital question is, was the intention manifested by any overt act, not by what kind of messenger it was sent. The bargain, if ever struck at all, must be *eo instanti* with such overt act. Mailing a letter containing an acceptance, or the instrument itself intended for the other party, is certainly such an act.<sup>5</sup>

<sup>2</sup> 12 AM. JUR. 539 (1938); 17 C.J.S. 403 (1939).

<sup>3</sup> *Shubert Theatrical Co. v. Rath*, 271 Fed. 827, 20 A.L.R. 846 (2d Cir. 1921). See also *L. & E. Wertheimer, Inc. v. Wehle-Hartford Co.*, 126 Conn. 30, 9 A. 2d 279, 125 A.L.R. 985 (1939) (telegraph); *Mercer Elec. Mfg. Co. v. Connecticut Elec. Mfg. Co.*, 87 Conn. 691, 89 A. 909 (1914).

<sup>4</sup> *Tuttle v. Iowa State Traveling Men's Ass'n*, 132 Iowa 652, 104 N.W. 1131 (1905).

<sup>5</sup> *Hallock v. Commercial Ins. Co.*, 26 N.J.L. 268, 282 (1857). As to acceptances by word of mouth, see 1 WILLISTON, CONTRACTS sec. 81 (Rev. Ed. 1936).

Under this view, where an offer is made by letter and the offeree posts an acceptance, the contract is completed notwithstanding a revocation or withdrawal of the offer mailed before the letter of acceptance is received.<sup>6</sup>

The United States Court of Claims, however, has refused to follow the historic doctrine of *Adams v. Lindsell* and its related cases. The most recent case which involved the validity of an acceptance was *Rhode Island Tool Company v. United States*,<sup>7</sup> decided by the Court of Claims in 1955. The plaintiff submitted bids to the government on a number of items. In computing the amount of the bid, the plaintiff made a mistake and made the bid less than it should have been to cover his costs of production. The record does not show whether this mistake was communicated to the government until after a notice of award had been mailed informing the plaintiff that the bid had been accepted. However, the court did not consider this problem in reaching a decision. The court held that the plaintiff had effectively withdrawn the bid by notifying the government of the error before the notice of award was received. This decision was based on a section of the United States Postal Regulations,<sup>8</sup> allowing withdrawal of a letter from the mail before it has reached its ultimate destination. The court held that an acceptance is not good until received. The sender does not lose control over the letter the moment it is deposited in the post office, but retains the right of control until delivery. The post office becomes, in effect, the agent of the sender.

A Court of Claims case decided prior to the *Rhode Island Tool Company* case, but very similar in both fact situation and holding, was *Dick v. United States*.<sup>9</sup> The plaintiff solicited an offer from the United States Coast Guard for the manufacture of ship propellers. After mailing an acceptance of the Coast Guard's offer the plaintiff discovered an error and sent a telegram of revocation which arrived before the letter of acceptance. It was held that because of the Post Office Regulations permitting withdrawal of letters from the mail, the acceptance

<sup>6</sup> *Geary v. Great Atlantic & Pacific Tea Co.*, 366 Ill. 625, 10 N.E. 2d 350 (1937).

<sup>7</sup> 128 F. Supp. 417 (1955).

<sup>8</sup> *Withdrawal of sender before dispatch.* (a) After mail matter has been deposited in a post office it shall not be withdrawn except by the sender. . . .

*Recall of matter after dispatch.* (a) When the sender of any article of unregistered mail desires its return after it has been dispatched from the mailing office application shall be made to the postmaster at the office of mailing. . . .

(b) When application has been made in due form for the recall of an article of mail matter the postmaster shall telegraph a request to the postmaster at the office of address, or to a railway postal clerk in whose custody the matter is known at the time to be, for the return of such matter to his office. . . . (39 C.F.R. 10.09, 10.10, 1939 Ed.)

<sup>9</sup> 82 F. Supp. 326 (1949).

was not good until received, and the plaintiff's revocation was therefore valid. A vigorous dissent was written by one of the judges, containing the following language:

We have, then, a case of hardship brought about by the plaintiff's error. I think we should apply to it the usual rules of law and equity with regard to the making and performance of contracts . . . [A] contract is not a subjective thing, some unknown or unmanifested inner intention of one of the parties. It is an objective thing, made up of the manifestations outwardly made by the parties, to be seen and acted upon the assumption that, in making contracts, one means what he says, when there is no reason to suppose that he does not. In this way the world's business gets itself done, an occasional hardship is suffered, but persons who have made contracts know what they have, and can expect that their contracts, as made, will be performed. . . .<sup>10</sup>

The view of this dissenting judge is confirmed by a prominent authority in the field of Contracts. Professor Williston states that although in the United States the sender of a letter may regain it by complying with certain postal regulations, a contract is considered completed by the authorized mailing of an acceptance.<sup>11</sup>

The two previously mentioned decisions of the Court of Claims rely on a Tennessee case as authority for their interpretation of the effect of the Postal Regulations on the doctrine of *Adams v. Lindsell*. The case is *Traders' National Bank v. First National Bank*,<sup>12</sup> in which the plaintiff sent a check to the defendant, the drawee, for acceptance. The defendant returned a letter through the mail containing a draft issued in acceptance of the check. Before the letter reached its destination, however, the defendant bank reconsidered its action and acting pursuant to postal regulations, appealed to the postal authorities and secured return of the letter. The plaintiff sued for the amount of the check, claiming that the acceptance was good when posted. The court held that since the letter was reclaimed before it reached its destination, delivery was not complete until the letter reached the addressee. The post office became the agent of the sender. This case differs in factual situation from the Court of Claims cases, since the letter was actually removed from the mail before receipt by the addressee. It was not the first case to have interpreted the Postal Regulations as changing the historic rule of contract law. As far back as 1889 it was held that the Post Office, because of regulations allowing withdrawal of mail, became the agent of the sender.<sup>13</sup>

<sup>10</sup> *Id.* at 333.

<sup>11</sup> 1 WILLISTON, *op. cit. supra* note 5 at 244 sec. 86.

<sup>12</sup> 142 Tenn. 229, 217 S.W. 977, 9 A.L.R. 382 (1920).

<sup>13</sup> *Buehler v. Galt*, 35 Ill. App. 225 (1889) (Sender of a certified check, not mailed at the request of the payee or drawee, was held to have retained posses-

Admittedly, there are valid and logical arguments to be made for either of the positions on the question of when an acceptance takes effect: the historic position of the court in *Adams v. Lindsell*, and the position of the court in *Rhode Island Tool Co. v. United States*, both of which attempt to meet the demands of business conditions. In the latter opinion, it is pointed that the old rule was established before Morse invented the telegraph as a means of communication. The argument was made that since faster means of communication are now available, the post office department wisely changed its regulations to permit withdrawal of letters from the mail. Thus, commerce still has a breaking point on which it may rely for completion of a contract, but that point has been transferred from the mailing to the receipt of an acceptance.<sup>14</sup>

In the Tennessee case the letter of acceptance was actually withdrawn from the mail and it is believed that this case should be limited to its facts and should not be used to justify the result in the two cases decided by the Court of Claims. In these cases no letters were actually withdrawn from the mail. In *Rhode Island Tool Co.*<sup>15</sup> the court used the postal regulation, allowing withdrawal, to justify its holding that the offeror could withdraw an offer, after the offeree had mailed an acceptance, because the acceptance did not take effect when mailed. It may easily be seen that the offeror is given a substantial advantage in this type of a case, since he may withdraw his offer up until the time the acceptance is received. Occasionally, letters may be lost. Therefore the offeree, to be absolutely certain, must wait until he has received some notification from the offeror before he can make any arrangements in reliance on the fact that a contract has arisen. The time for the completion of a contract by post has thus been doubled. And is the same rule to apply in the case of an acceptance sent by telegraph? Or will one rule apply to acceptances sent by mail, and another to those sent by telegraph, since one who uses the latter

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sion during transmission). But see *Canterbury v. Bank of Sparta*, 91 Wisc. 53, 64 N.W. 311, 30 L.R.A. 845 (1895) (Defendant bank mailed a draft to the payee, but could not withdraw it from the mail after discovering the insolvency of the drawee).

<sup>14</sup> *Rhode Island Tool Co. v. United States*, *supra* note 7 at 420.

<sup>15</sup> *Rhode Island Tool Co. v. United States*, *supra* note 7 at 418. The invitation to bid in this case contained the following provisions: "The successful bidder will receive notice of award at the earliest possible date, and such award will thereupon constitute a binding contract between the bidder and the government without further action on the part of the bidder." (Italics supplied) It is believed that this provision could have furnished the court with a sound basis for deciding that the acceptance was good when received, and the court need not have perpetuated a rule of contract law contra to the view of an overwhelming majority of cases.

means has little if any opportunity to withdraw or revoke? Moreover, is a principle of contract law to be made subject to variations in postal regulations? It is believed that the rule of *Adams v. Lindsell* is the better view. It can make little practical difference to the offeror if the offeree withdraws his acceptance, because the offeror will not act in reliance on the contract until an acceptance is received. There are cases decided after adoption of the Postal Regulations of 1913 in which the doctrine of *Adams v. Lindsell* was followed. However, these postal regulations were not called to the attention of the court.<sup>16</sup> Even so, it is believed that these cases reach the better result, and that an acceptance should become effective when posted.<sup>17</sup>

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#### FEDERAL ESTATE TAXATION—SOME PROBLEMS IN APPORTIONMENT (IN THE ABSENCE OF WILL PROVISION OR IN INTESTATE ESTATES)

The federal estate tax is calculated in much the same manner as the federal income tax. There is a determination of the gross taxable estate,<sup>1</sup> from which are subtracted the allowable deductions and exemptions.<sup>2</sup> The resulting sum is defined as the net taxable estate and upon this sum the tax is based.<sup>3</sup> The responsibility of paying the tax is on the personal representative of the estate.<sup>4</sup> The "Gross Estate," as defined by the Internal Revenue Code, includes not only real and personal property of the decedent which passes by will or by intestacy but also interests which are not subject to administration (sometimes termed non-testamentary interests) such as life insurance proceeds, joint and community property, property over which the decedent held a power of appointment, gifts in contemplation of death, transfers intended to take effect in possession or enjoyment at or after death, and trusts subject to amendment or revocation.<sup>5</sup> As noted above, payment of the tax on these non-testamentary interests is made the responsibility of the personal representative, regardless of the fact that such property may never come within his control.<sup>6</sup>

<sup>16</sup> *Barnebey v. Barron G. Collier*, 65 F. 2d 864 (C.C.A. 8th 1933); *Shubert Theatrical Co. v. Rath*, 271 Fed. 827, 20 A.L.R. 846 (C.C.A. 2d 1921); *J. R. Watkins Co. v. Hill*, 214 Ala. 507, 108 S. 244 (1926); *International Transp. Ass'n v. Des Moines Morris Plan Co.*, 215 Iowa 268, 245 N.W. 244 (1932); *McAlister v. Klein*, 81 Okla. 291, 198 P. 506 (1921).

<sup>17</sup> The risk thereby placed on the offeror can be avoided by conditioning the offer so as to require receipt of the letter of acceptance.

<sup>1</sup> 26 U.S.C. sec. 811.

<sup>2</sup> 26 U.S.C. sec. 812.

<sup>3</sup> 26 U.S.C. sec. 810.

<sup>4</sup> 26 U.S.C. sec. 822 (b).

<sup>5</sup> 26 U.S.C. sec. 811.

<sup>6</sup> U.S. Treas. Reg. 105, sec. 81.76.